

**§ 53-208.47. Surety bond.**

(a) Applicants shall be required to post a surety bond with the Commissioner at application and licensees shall maintain a surety bond in the amount of one hundred fifty thousand dollars (\$150,000) to be subsequently adjusted as set forth in subsection (b) of this section.

(b) The surety bond amount required subsequent to initial licensure shall consist of a base amount of one hundred fifty thousand dollars (\$150,000) for money transmission volumes in this State of no more than one million dollars (\$1,000,000). However, if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000), then the licensee's bond amount shall be one hundred seventy five thousand dollars (\$175,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), then the licensee's bond amount shall be two hundred thousand dollars (\$200,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred twenty-five thousand dollars (\$225,000); and if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred fifty thousand dollars (\$250,000).

(c) Any increased surety bond required under subsection (b) of this section shall be filed with the Commissioner on or before May 31 annually. Failure to obtain the additional surety bond required is grounds for summary suspension pursuant to G.S. 53-208.57(d)(2).

(d) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with the sale and issuance of payment instruments, stored value, or transmission of money. The Commissioner has the discretion to require the applicant to obtain additional insurance coverage to address related cybersecurity risks inherent in the applicant's business model as it relates to virtual currency transmission and to the extent such risks are not within the scope of the required surety bond.

(e) The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(f) In lieu of a surety bond, the licensee may deposit with the Commissioner, or with any bank in this State designated by the licensee and approved by the Commissioner, an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the surety bond or portion thereof, the following:

- (1) Unencumbered cash.
- (2) Unencumbered interest-bearing bonds.
- (3) Unencumbered notes.
- (4) Unencumbered debentures.
- (5) Unencumbered obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States.
- (6) Unencumbered obligations of this State or of any political subdivision of the State, or guaranteed by this State.

The securities or cash shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the Commissioner, to

substitute other securities for those deposited, and shall be required to do so on written order of the Commissioner made for good cause shown.

(g) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred or accrued during that period.

(h) The surety bond shall remain in place for no less than five years after the licensee ceases money transmission operations in the State. However, notwithstanding this provision, the Commissioner may permit the surety bond to be reduced or eliminated prior to that time to the extent that the amount of the licensee's outstanding payment instruments, stored value obligations, and money transmitted in this State is reduced.

(i) The surety bond proceeds and any cash or other collateral posted as security by a licensee shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments, stored value obligations, and money transmissions and to the State in the event of the bankruptcy of the licensee. (2016-81, s. 1; 2017-102, ss. 14.1(c), 46.)